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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT SEATTLE

10                   MICHAEL MALONE, *et al.*,

11                   Plaintiffs,

12                   v.

13                   CLARK NUBER, P.S., *et al.*,

14                   Defendants.

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16                   Case No. C07-2046RSL

17                   ORDER PERMITTING RESPONSE TO  
18                   DEFENDANTS' NEW ARGUMENT

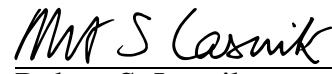
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20         This matter comes before the Court on the parties' cross motions for summary judgment.  
21         Specifically, in the MNS defendants' reply in support of their motion for summary judgment,  
22         they argue, for the first time, that New York law applies and requires the dismissal of most of  
23         plaintiffs' claims. Plaintiffs have not filed a sur-reply regarding the new argument.

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25         Nevertheless, plaintiffs should have an opportunity to address it both because it was belatedly  
26         raised and because defendants claim it is partially dispositive. Accordingly, plaintiffs may file,  
27         no later than Friday, August 13, 2010, a memorandum not to exceed ten pages in length  
28         addressing the new argument. No further briefing on the issue will be accepted.

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30         Moreover, during the upcoming oral argument, counsel should be prepared to address  
31         whether the belated assertion of the new argument—three years into this litigation—should result

1 in the imposition of sanctions and/or the shifting of costs and expenses in this litigation.

2 DATED this 6th day of August, 2010.  
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Robert S. Lasnik  
7 United States District Judge  
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ORDER PERMITTING RESPONSE  
TO DEFENDANTS' NEW ARGUMENT - 2